

STATE OF MICHIGAN
COURT OF APPEALS

In re HAWKINS, Minors.

UNPUBLISHED
April 12, 2016

No. 329072
Wayne Circuit Court
Family Division
LC No. 11-504644-NA

Before: GLEICHER, P.J., and CAVANAGH and FORT HOOD, JJ.

PER CURIAM.

The circuit court terminated the respondent-mother's parental rights to her two young children pursuant to MCL 712A.19b(3)(c)(i) and (g) after providing more than three years of reunification services. Respondent challenges the evidentiary support for these statutory grounds and asserts that termination was not in her children's best interests. We affirm.

I. BACKGROUND

The Department of Health and Human Services (DHHS) took respondent's children into care in December 2011, after her second child was born addicted to opiates. Respondent tested positive for methadone, cocaine, opiates, and marijuana at that time. She admitted to a long history of abusing several different controlled substances. She also suffered from bipolar disorder but had not taken medications to control her condition for many years. Evidencing the longevity of her substance abuse and mental health issues, respondent had previously ceded care of an older child to a maternal aunt. Following her infant son's release from the hospital, both children were placed with a paternal aunt.

In the following years, respondent complied with the DHHS's order that she participate in parenting classes. She never completely complied with court orders, however, geared toward ending her substance abuse addiction and managing her mental illness. Initially, respondent participated in daily methadone treatment to curb her addictions. However, she continued to test positive for controlled substances at random drug screens and accepted prescriptions for painkillers despite her addiction. The court ordered her to participate in a 90-day inpatient treatment program, but one could not be located. Respondent researched and entered a 28-day program at Ridgeview Behavioral Hospital in Ohio instead. Thereafter, she failed to follow through with outpatient treatment, relapsed, and started a new round of methadone therapy and counseling through Rainbow Center of Michigan. Respondent declined to secure random drug screens through a DHHS-approved facility, using Rainbow as an alternative. Respondent continued to test positive for substances even at her chosen clinic. Notably, by the time of the

final termination hearing, respondent had separated from the children's father and moved in with a man who spent 10 years in prison for drug trafficking. She was also pregnant again despite her continued drug abuse.

Respondent declined necessary psychotropic medications to control her bipolar disorder. She began receiving psychiatric support services at Community Care Services in December 2014, three years after her children were taken into care. However, she refused to regularly use the medications prescribed for her. The DHHS ordered that her drug screens include analysis of whether she was taking her necessary prescribed medications. Respondent's tests were negative for these substances. Respondent also refused to sign releases so the DHHS could gather information regarding her mental health and substance abuse treatment and counseling and would not provide the information herself. Accordingly, the DHHS was left with only a partial picture of respondent's attempts at rehabilitation.

Moreover, respondent's attendance at parenting time sessions was less than ideal. In the early stages of the proceedings, respondent often cancelled or failed to appear. Even when her attendance became more regular, respondent lacked a rapport with her children. The children called her by her first name and did not follow her instructions. Respondent indicated that she would not be stricter because she wanted the visits to be enjoyable.

Ultimately, the court terminated respondent's parental rights, noting her failure to benefit from services despite the grant of additional time to do so.

II. STATUTORY GROUNDS

Respondent challenges the sufficiency of the evidence underlying the statutory grounds cited in support of termination. Pursuant to MCL 712A.19b(3), a circuit court "may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence" that at least one statutory ground has been proven. The petitioner bears the burden of proving that ground. MCR 3.977(A)(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). We review a circuit court's factual finding that a statutory termination ground has been established for clear error. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013) (quotation marks and citation omitted). "Clear error signifies a decision that strikes us as more than just maybe or probably wrong." *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009).

The circuit court terminated respondent's parental rights under MCL 712A.19b(3)(c)(i) and (g), which provide:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

The circuit court's ruling was based on clear and convincing evidence. The children were taken into care based on respondent's history of controlled substance abuse and untreated bipolar disorder. These conditions continued at the time of the July 2015 termination hearing despite that more than three years of rehabilitative services had been provided. The court also properly concluded that respondent could not rectify these conditions within a reasonable time. Respondent continually refused to take the medications prescribed to control her bipolar disorder. She tested positive for controlled substances as late as February 2015. Moreover, respondent chose to become romantically involved with a man she met in substance abuse counseling who had a prior criminal record for drug trafficking.

The DHHS also presented sufficient evidence that respondent had not provided proper care and custody for her children. Respondent abused several controlled substances while she was pregnant with her son and the child was born addicted to opiates. By the time of the termination hearing, respondent was on the cusp of giving birth to another child. During her current pregnancy, respondent continued to test positive for controlled substances that could harm the child despite that she had participated in inpatient and outpatient services and had received methadone therapy. Given respondent's continued drug abuse and consistent failure to attempt to manage her bipolar disorder, clear and convincing evidence supported that respondent would be unable to provide proper care and custody for her children within any reasonable timeframe.

III. BEST INTERESTS

Respondent further contends that termination of her parental rights was not in her children's best interests. "Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012), citing MCL 712A.19b(5). "[W]hether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence." *Moss*, 301 Mich App at 90. The lower court should weigh all the evidence available to it in determining the child's best interests. *Trejo*, 462 Mich at 356-357. Relevant factors in this consideration include "the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the

advantages of a foster home over the parent's home." *Olive/Metts*, 297 Mich App at 41-42 (citations omitted). Additionally, "a child's placement with relatives weighs against termination," and accordingly, "the fact that a child is living with relatives when the case proceeds to termination is a factor to be considered in determining whether termination is in the child's best interests." *Olive/Metts Minors*, 297 Mich App at 43.

By the time of the termination hearing, the children had been in care for more than three-and-half years. The youngest child had never been in his mother's care. Although respondent expressed love for her children, the children did not appear equally bonded with their mother. They referred to her by her first name and called their foster parent "mom." Moreover, the children were thriving in their foster home and the foster mother was open to adoption. The court acknowledged that the children were living with a relative, but both respondent and the foster mother opposed a guardianship. And given respondent's demonstrated unwillingness to actively manage her bipolar disorder and overcome her substance abuse addiction, we discern no error in determining that termination of respondent's parental rights was in the children's best interests.

We affirm.

/s/ Elizabeth L. Gleicher
/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood